IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 381/2005

(Phoolchand Vs. Smt. Gayatri Devi & Anr.)

Date of Order : 19/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Anuj Kala, for the petitioner.
Mr. D.Jasmatia for the respondents.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 27.8.2004 passed by Judge, Family Court, Jodhpur (for short 'the family court' hereinafter) whereby the application filed by the petitioner seeking modification of the interim maintenance granted in favour of the respondent No.2 Kumari Manisha was dismissed.

Heard learned counsel for the parties. Perused the order impugned as also material available on record.

The petitioner earlier filed a petition under Section 482 Cr.P.C. before this Court alleging therein that respondent NO.2 Manisha is married to Channaram and therefore being

married daughter she is not entitled for maintenance. While disposing of the petition, this Court allowed the petitioner therein to move before the family court for modification of the order. In pursuance thereof, the petitioner moved before the family court. However, the family court, by elaborate and well reasoned order, dismissed the application.

Whether Manisha married to Channaram or anyone else is a matter of evidence and has to be decided by evidence. since there had been affidavits which are in contradiction to each other. The case as set up by the petitioner is that Manisha has been residing at her maternal grand father and is doing the house hold work. Had she married, there could not have been any occasion to reside at maternal grand father's house and the mother of Manisha specifically denied having married her. It has also been brought on record that on relevant date 26.4.1999, the age of Manisha was around 11 and half years. A school certificate has been produced before the family court issued by the Board of Secondary Education showing the date of birth of Manisha as 06.8.1987 and as such on 26.4.1999 she could not have attained the age of majority and therefore, the family court did not accept the contention raised by the petitioner. Be that as it may. These are the issues to be decided by adducing the evidence and while deciding the interim maintenance, none of the parties adduced evidence.

In this view of the matter, no case for interference is made out. The petition is therefore, dismissed. However, the family court is directed to decide the main application filed by the respondents under Section 125 Cr.P.C. utmost expeditiously preferably within four months from today.

(H.R.PANWAR),J.

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